

Policy Name: **Sexual Violence Prevention and Response Title IX; Article 129-B**  
Cochran School of Nursing  
July, 2016

Cochran School of Nursing is committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in College programs, activities, and employment. All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights, regardless of whether the crime or violation occurs on campus or off campus.

In furtherance of those goals, the CSN has developed this Policy to define prohibited sexual conduct, establish a mechanism for determining when sexual misconduct has taken place, and provide recourse for members of the CSN community whose rights have been violated. This Policy is intended to be consistent with the school's obligations under Title IX of the Education Amendments Act of 1972 ("Title IX"); the Clery Act, as amended; the Violence Against Women Reauthorization Act of 2013 ("VAWA"); and, New York Education Law Article 129-B.

### **Prohibited Conduct**

- A. The Cochran School of Nursing (CSN) prohibits sexual misconduct, an umbrella term that is used to encompass unwanted or unwelcome conduct of a sexual nature that is committed without valid consent. Sexual misconduct includes sex discrimination/gender discrimination, sexual harassment/gender-based harassment, sexual assault, stalking, dating violence, domestic violence, and sexual exploitation, as defined below. Sexual misconduct and all acts of sexual misconduct, as set forth below, are strictly prohibited under this Policy.
1. **Sex Discrimination/Gender Discrimination:** Actions that deprive a member of the College community of educational or employment access, benefits, or opportunities because of that individual's sex or gender.
  2. **Sexual Harassment/Gender-Based Harassment (Hostile Environment):** Unwelcome verbal or physical conduct of a sexual nature that has the effect of unreasonably interfering with an individual's work or academic performance or that creates an intimidating, hostile, or offensive working, educational, or living environment.
  3. **Sexual Harassment/Gender-Based Harassment (Quid Pro Quo):** Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when submission to or rejection of such conduct results in adverse educational or employment action or the threat of such action or limits or denies an individual's educational or employment access, benefits, or opportunities.

4. **Sexual Assault:** Unwanted or unwelcome touching of a sexual nature, including hugging, kissing, fondling, oral sex, anal intercourse, vaginal intercourse, or other intentional sexual contact that occurs without clear, knowing, valid, and voluntary consent and/or by force.
  5. **Stalking:** A pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that makes that person afraid or concerned for his or her safety.
  6. **Dating Violence:** Violence or the threat of violence committed by a person who is or has been in a social relationship of a romantic and/or intimate nature with the survivor/victim.
  7. **Domestic Violence:** A pattern of abusive behavior in a social relationship of a romantic and/or intimate nature that is used by one partner to gain or maintain control over another intimate partner.
  8. **Sexual Exploitation:** Non-consensual and/or abusive sexual advantage taken towards an individual to benefit anyone other than the individual being exploited. Sexual exploitation includes, but is not limited to invasion of sexual privacy, engaging in voyeurism, and non-consensual video-or audio-taping of sexual activity.
- B. Sexual misconduct may occur between people of the same sex or between people of different sexes and may occur regardless of person's gender expression, gender identity, or sexual orientation.
- C. This Policy applies to conduct that occurs:
1. on campus; and,
  2. off campus, if;
    - a. in connection with a CSN program or activity or,
    - b. the underlying behavior is reasonably believed to pose a threat of harm to an individual or the campus community in general; or,
    - c. the underlying behavior may have the effect of creating a hostile environment for any member of the CSN community.
- D. **Retaliation** is prohibited under this Policy. Retaliation occurs when an adverse employment or educational action is taken against a member of the CSN community because of that individual's participation in a complaint or investigation of a violation under this Policy.

The school may investigate and/or sanction retaliation prohibited under this Policy regardless of where the retaliation took place, so long as the retaliatory acts were conducted as a result of or in connection with an individual's participation in a complaint or investigation of a violation under this Policy.

- E. It is a violation of this Policy for anyone knowingly to make false accusations of discrimination or harassment. A determination that a complaint is not meritorious, however, is not necessarily equivalent to a false allegation and a finding for the responding party does not necessarily constitute a finding that the complaint was in bad faith.
- F. The school prohibits members of the faculty, administration, or staff from engaging in a dating or sexual relationship, whether or not consented to, with a student or employee whom the faculty, administrator, or staff member either instructs, evaluates, supervises, or advises, or over whom the faculty, administrator, or staff member is in a position to exercise authority over in any way, now or in the foreseeable future. Any instances of such relationships will result in an investigation and may result in disciplinary actions up to and including termination.

**Affirmative Consent to Sexual Activity** is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

**Principles of guidance regarding affirmative consent are as follows:**

- A. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- B. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- C. Consent may be initially given but withdrawn at any time.
- D. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity.

Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

- E. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- F. When consent is withdrawn or can no longer be given, sexual activity must stop.
- G. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.

## **Students' Bill of Rights**

All students have the right to:

- A. Make a report to local law enforcement and/or state police;
- B. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- C. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
- D. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- E. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- F. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- G. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- H. Be protected from retaliation by the institution, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- I. Access to at least one level of appeal of a determination;
- J. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
- K. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution; and,
- L. Make a report to an employee with the authority to address complaints, including the Title IX Coordinator, Director of Human Resources, Campus Security, Local Law Enforcement, and/or Family Court or Civil Court.

## **Amnesty Provision**

The health and safety of every student at CSN is of utmost importance. The school recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. CSN strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to school officials or law enforcement will not be subject to Institution's code of conduct action for

violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Nothing in this section shall be construed to limit an institution's ability to provide amnesty in additional circumstances.

### **Reporting a Potential Policy Violation**

The CSN takes all allegations of sexual misconduct seriously and encourages any member of the CSN community who has been a victim of sexual misconduct or a witness to sexual misconduct to report the incident to CSN officials. The reporting party may elect to make a confidential or non-confidential disclosure using the avenues set forth under 'Options for Confidential Disclosure' (page 8). In addition to reporting the incident to the CSN, please note that you may always dial 911 or contact the Yonkers Police Department (Telephone: 914 337-7900) to report an emergency, ongoing threat, or potential criminal conduct to law enforcement. It is your choice whether to report an act of sexual misconduct to law enforcement.

### **The Importance of Preserving Evidence**

Whether or not you choose to report an act of sexual misconduct, it is important to preserve evidence of the assault in case you later wish to report the sexual misconduct to law enforcement or school officials. If you have cleaned up after an assault or no longer have evidence, you may still report the incident and an investigation will follow, but it will help police and investigators to have all available evidence.

To preserve evidence of a sexual assault do not wash your hands or face; do not shower or bathe; do not brush your teeth; and, do not change clothes or straighten up the area where the assault took place. If you remove clothing, try to preserve the clothing in a paper bag. To preserve evidence of physical violence take photographs of any bruising or other visible injuries.

Email, social media posts, text messages, and/or voicemails may also provide evidence of sexual misconduct.

### **Resources**

The CSN Lead Title IX Coordinator is Marc Leff, Vice President of Human Resources at St. John's Riverside Hospital. He is the person responsible for overseeing the administration of this policy. He can be reached at [Mleff@riversidehealth.org](mailto:Mleff@riversidehealth.org) or (914) 964-4230. The Deputy Title IX Coordinator is Jim Leviness, Assistant Director of Security at St. John's Riverside Hospital. He can be reached at [Jleviness@riversidehealth.org](mailto:Jleviness@riversidehealth.org) or (914) 964-4445.

Resources for reporting individuals include access to the Title IX Coordinator, Sexual Assault Nurse Forensic Program (SAFE) nurse examiner, Occupational Health, and Emergency Department services. Access to the Title IX Coordinator and SAFE program are included in student fees. CSN shall ensure that students have access to a sexual assault forensic examination through the St. John's Riverside Hospital. Students will be charged for Emergency Department services. Information on sexually transmitted infections, sexual assault forensic examinations, and other resources is available through the New York State Office of Victim Services. The website address is <https://ovs.ny.gov>

## **Prompt Review**

Both the Accused or Respondent and the Reporting Individual shall, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a no contact order, including potential modification, and shall be allowed to submit evidence in support of his or her request. CSN will establish an appropriate schedule for the Accused and Respondents to access applicable CSN buildings and property at a time when such buildings and property are not being accessed by the Reporting Individual. The Reporting Individual will be assisted by CSN's security officers, if applicable, or other officials in obtaining an order of protection, and have an opportunity to meet or speak with a CSN representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the Accused's responsibility to stay away from the protected person or persons; Both the Accused or Respondent and the Reporting Individual shall receive an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.

They shall also receive assistance from CSN security in effecting an arrest through local law enforcement when an individual violates an order of protection. When the Accused or Respondent is a student determined to present a continuing threat to the health and safety of the community, CSN may subject the Accused or Respondent to interim suspension pending the outcome of a judicial or conduct process under CSN's policies and procedures. Both the Accused or Respondent and the Reporting Individual shall, upon request and consistent with the CSN's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of his or her request.

A Reporting Individual, the Accused and/or Respondent shall, upon request, be afforded a prompt review of the need for and terms of any reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment, that directly affects him or her, and shall be allowed to submit evidence in support of his or her request.

## **Judicial Proceedings**

CSN shall ensure that every student be afforded the following rights:

- A. The right to request that student conduct charges be filed against the Accused. This request shall be initiated with the Title IX Coordinator.
- B. the right to a process in all student judicial or conduct cases, where a student is accused of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the CSN's code of conduct that includes, at a minimum:
  1. notice of the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions;

2. an opportunity to offer evidence during an investigation, and to present evidence and testimony at a hearing with the Director of Student Services and the director of Learning Resources, and have access to a full and fair record of any such hearing, which shall be preserved and maintained for at least five years from such a hearing and may include a transcript, recording or other appropriate record; and
  3. access to at least one level of appeal of a determination before a panel, which will include the Director of Security, and the Dean. In order to effectuate an appeal, a respondent and reporting individual in such cases shall receive written notice of the findings of fact, the decision and the sanction, if any, as well as the rationale for the decision and action. In such cases, any rights provided to a Reporting Individual must be similarly provided to a Respondent and any rights provided to a Respondent must be similarly provided to a Reporting Individual.
- C. Through out proceedings involving an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate CSN's code of conduct, the Respondent, Accused, and Reporting Individual shall have the right to be accompanied by an advisor of choice who may assist and advise them throughout the judicial or conduct process including during all meetings and hearings related to such process. The advisor may speak to the person whom he or she is advising, but may not speak on behalf of that person or participate in any other way in the proceedings.
- D. To a prompt response to any complaint and to have the complaint investigated and adjudicated in an impartial, timely, and thorough manner by property trained individuals.
- E. To an investigation and process that is fair, impartial and provides a meaningful opportunity to be heard and that is not conducted by individuals with a conflict of interest.
- F. To have the CSN's judicial or conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.
- G. To review and present available evidence in the case file, or otherwise in the possession or control of the CSN, and relevant to the conduct case, consistent with CSN policies and procedures.
- H. To exclude their own prior sexual history with persons other than the other party in the judicial or conduct process or their own mental health diagnosis and/or treatment from admittance in the CSN disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.

- I. To receive written or electronic notice, provided in advance pursuant to CSN policy and reasonable under the circumstances, of any meeting they are required to or are eligible to attend, of the specific rule, rules or laws alleged to have been violated and in what manner, and the sanction or sanctions that may be imposed on the Respondent based upon the outcome of the judicial or conduct process, at which time the designated hearing or investigatory officer or panel shall provide a written statement detailing the factual findings supporting the determination and the rationale for the sanction imposed.
- J. To make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
- K. To simultaneous (among the parties) written or electronic notification of the outcome of a judicial or conduct process, including the sanction or sanctions.
- L. To be informed of the sanction or sanctions that may be imposed on the respondent based upon the outcome of the judicial or conduct process and the rationale for the actual sanction imposed.
- M. To choose whether to disclose or discuss the outcome of a conductor judicial process.
- N. To have all information obtained during the course of the conductor judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

The standard of evidence used in adjudication of these cases will be preponderance of evidence. Possible sanctions if a student is found responsible for violation of the code of conduct, with regards to sexual misconduct include disciplinary sanctions including suspension or expulsion.

### **Options for Confidential Disclosure**

CSN offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. Professional counselors, medical providers, and clergy, may offer confidentiality with regard to domestic violence, dating violence, stalking, or sexual assault. If a reporting individual discloses an incident to an CSN employee who is responsible for responding to or reporting domestic violence, dating violence, stalking, or sexual assault but wishes to maintain confidentiality or does not consent to CSN's request to initiate an investigation, the Title IX Coordinator will weigh the request against CSN's obligation to provide a safe, non-discriminatory environment for all members of its community.

CSN is not obligated to begin an investigation based on information disclosed through a public awareness event such as a candlelight vigil, protest, or other public event. CSN may use the information provided at such an event to inform its efforts for additional education and prevention efforts.

Please refer to table below regarding information about existing and available methods to anonymously disclose on confidential hotlines provided by New York state agencies and not-for-profit entities:

Victims Assistance program in Yonkers  
<http://www.westcop.org/victims-assistance/>

Westchester County resources  
<http://women.westchestergov.com/domestic-violence/safety-tips/help-for-abused-women>

New York City Alliance against sexual Assault  
[http://www.svfreenyc.org/resource\\_list\\_Hospital.html](http://www.svfreenyc.org/resource_list_Hospital.html)

Safe Horizon  
<http://www.safehorizon.org/>

Office for the Prevention of Domestic Violence New York State  
<http://www.opdv.ny.gov/>

Hopes Doors: Domestic Violence, Emergency Shelter, Support and Counseling, Referrals for Assistance:  
<http://www.hopesdoorny.org/>

My Sister's Place: Domestic Violence, Emergency Shelter, Support and Counseling, Legal Services.  
<http://www.mspny.org/>

Please note that the resources above are for crisis intervention, resources, and referrals, and are not reporting mechanisms. Disclosure on a call to a hotline does not result in the provision of information to CSN.

The Family Educational Rights and Privacy Act, 20 U.S.C. 1232g, allows CSN to share information with parents when there is a health or safety emergency, or when the student is a dependent on either parent's prior year federal income tax return; and that generally, CSN shall not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual. CSN may take proactive steps, such as training or awareness efforts, to combat domestic violence, dating violence, stalking or sexual assault in a general way that does not identify those who disclose or the information disclosed. If CSN determines that an investigation is required, it shall notify the reporting individuals and take immediate action as necessary to protect and assist them. CSN shall seek consent from reporting individuals prior to conducting an investigation.

Declining to consent to an investigation shall be honored unless CSN determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community. Honoring such a request may limit the CSN's ability to meaningfully investigate and pursue conduct action against an accused individual. Factors used to determine whether to honor such a request include, but are not limited to:

- A. Whether the accused has a history of violent behavior or is a repeat offender;
- B. Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;

- C. The increased risk that the accused will commit additional acts of violence;
- D. Whether the Accused used a weapon or force;
- E. Whether the Reporting Individual is a minor; and
- F. Whether CSN possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

### **No Contact Order**

When the accused or respondent is a student, reporting individuals may request that CSN issue a “no contact order,” whereby continued intentional contact with the reporting individual would be a violation of the CSN policy subject to additional conduct charges. If the accused or respondent and a reporting individual observe each other in a public place, it shall be the responsibility of the accused or respondent to leave the area immediately and without directly contacting the reporting individual.

### **Transcript Notations**

For crimes of violence, including, but not limited to sexual violence, CSN shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For a Respondent who withdraws from the CSN while such conduct charges are pending, and declines to complete the disciplinary process, CSN shall make a notation on the transcript of such students that they "withdrew with conduct charges pending."

In cases of suspension, these transcript notations will be removed one year after conclusion of the suspension. Notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

### **Student Onboarding**

All new first-year and transfer students shall, receive training on the CSN 's Code of Conduct and student's rights with respect to sexual and interpersonal violence, the dangers of drug and alcohol use, importance of communication with trusted friends and family whether on campus or off campus, and the availability of CSN officials who can answer general or specific questions about risk reduction; and consequences and sanctions for individuals who commit these crimes and code of conduct violations.